IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE ELEVENTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 7401 of 1997

Between:

1 The District Social Welfare Officer
Eluru, West Godavari District.

2 District Collector,
West Godavari (dist) Eluru.

..... PETITIONERS

AND

1 Mummidivarapu Abraham, S/o. Narsimha Murthy
R/o. Daravaram, Chagallu Mandal, W.G.Dist.
2 The Presiding Officer, Labour Court,
Guntur, Guntur District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction particularly one in the nature of Writ of Certiorari, calling for the records relating to the Award dt. 7-6-96 made in I.D.No.624/91 passed by the 2nd respondent herein and quash the same as illegal, arbitrary and without jurisdiction.

Counsel for the Petitioners: GP FOR SOCIAL WELFARE

Counsel for the Respondent No.1: MR.P.RAGHAVENDRA REDDY

Counsel for the Respondent No.2: None appeared

The Court made the following ORDER:

ORDER:

The District Social Welfare Officer, West Godavari District and the District Collector, Eluru, West Godavari District are the petitioners herein. They filed the writ petition questioning the award dated 07.06.1996 passed by the Labour, Guntur, in I.D.No.624 of 1991, under which, the order of the second petitioner was set aside ordering reinstatement of the first respondent into service with continuity of service but without back wages.

2. The first respondent was appointed as a Helper in the Government S.C Boys Hostel, Tanuku on 08.12.1980. He continued in service up to 30.11.1984. By the proceedings of the second petitioner dated 26.11.1984, the first respondent's services were put to an end after 30.11.1984, on the ground that the first respondent was a contingent worker appointed without the media of employment exchange and without the existence of sanctioned post. The said order was assailed before the Labour Court by raising an industrial dispute. The Labour Court, after considering the evidence adduced before it, came to the conclusion that the termination order passed by the second petitioner is illegal, as the said order was not preceded by issuing any notice of payment or compensation as contemplated under the provisions of the Industrial Disputes Act, 1947 (for short 'the Act'). It further held that the first respondent continued to work for more than 240 days, therefore, the order of termination amounts to retrenchment and infraction of the provisions of Section 25-F of the Act. Accordingly, it set aside the order of termination. But, however, as the first respondent approached the Labour Court after seven years, backwages were denied though ordered continuity of service. Aggrieved by the same, the petitioners have come up with the present writ petition.

3. The learned Government Pleader for Social Welfare appearing on behalf of the petitioners contended that the Labour Court was not justified in setting aside the order of termination passed by the second petitioner. It is contended that in the absence of any sanctioned posts, the first respondent was illegally appointed. Further, according to the second petitioner, the regular procedure contemplated for appointment in any Government Services was not followed. Therefore, even on that ground also the appointment of the first respondent is illegal and without jurisdiction. Therefore, the termination order passed by the second petitioner is legal and justified. The learned counsel also contended that similar orders were passed in respect of similarly placed persons and those persons, who have approached this

Court by way of writ petitions and later the State Administrative Tribunal were unsuccessful in their petitions, as the representation of the petitioners were not considered. Therefore, the first respondent is not entitled to any relief. The learned Government Pleader also contended that as the first respondent approached the Labour Court after seven years of termination, the Labour Court ought not have granted reinstatement. Therefore, he sought to set aside the order.

4. The learned counsel for the first respondent, on the other hand, supported the order. It is contended that the first respondent was taken into service though originally there is no sanctioned post. Subsequently, the posts were sanctioned. The learned counsel also contended that in view of subsequent orders passed by the Government such as in G.O.Ms.No.212, where benefit of regularization of services were granted to those persons, who were appointed and continued in service for more than five years prior to 25.11.1993, the first respondent is also entitled not only to continue in the service but also for regularization. The learned counsel also contended that as admittedly the provisions of the Act were not complied with, the order of termination was set aside. The same would not warrant any interference of this Court.

5. Heard both sides and considered the material available on record.

6. Admittedly, the first respondent was appointed as a Helper on 08.12.1980 in the Government S.C Boys Hostel, Tanuku. He continued for more than four years by the date of termination of his service by the order dated 26.11.1984 issued by the second petitioner. After 30.11.1984 the first respondent was not continued in service by virtue of the said order. The termination was on the ground that there was no sanctioned post and the procedure of sponsoring the names from the Employment Exchange was not followed. But, the dispute raised before the Labour Court was whether the petitioners followed the procedure contemplated under the Act before dispensing with the services of the first respondent. The Tribunal, after consideration of the material available on record, gave a categorical finding that the order of termination passed by the second petitioner amounts to retrenchment and before retrenching the first respondent from service, the procedure contemplated under the provisions of the Act was not followed. Therefore, the said order of termination was held bad and accordingly set aside. The Tribunal also noted the fact that the first respondent approached the Tribunal after seven years. Therefore, denied the

backwages, to which otherwise the first respondent would be entitled to. Apart from the factual situation that was prevailing on the date when the first respondent was recruited, may be on daily wages or as a contingent worker, but subsequently by virtue of sanction of the posts in the Government S.C Boys Hostel and also the orders issued by the Government under G.O.Ms.No.212 ordering regularization of those who have been working for more than five years by 25.11.1993, the first respondent is entitled even for the regularization of his services.

7. In any case, that may not be an issue to be gone into at this stage, but the Tribunal found that termination order passed by the second petitioner was illegal in view of the non-compliance of the provisions of the Act and ordered reinstatement, while setting aside the termination order with continuity of services but without backwages. The said order passed by the Tribunal is in accordance with law and does not call for any interference from this Court.

8. The writ petition is accordingly dismissed. No costs.

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S.Ananda Reddy, J

11th November, 2004

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To

1 The Presiding Officer, Labour Court,
Guntur, Guntur District.

2 Two CD Copies